HONG KONG VEGETABLE OIL COMPANY LTD. v. MALIN SIRINAGA WICKER & ORS.

[O.C.J. (Rajah J.) May 25, 1977]
[Singapore — Motion in Suit No. 3943 of 1976]

Practice and Procedure — Interlocutory injunction — Principles applicable — Whether serious question to be tried — Legal or equitable right to enforce —Whether plaintiffs would be adequately compensated by damages — Holding Company.

Company Law — Holding company — Relation with subsidiary.

In this case the applicant applied for an injunction to prevent the respondents from carrying on certain business transactions.

Held: (1) in order to justify the issue of an interlocutory injunction the court must be satisfied that there is a serious question to be tried. In this case the court was not so satisfied as all the proper, necessary and interested parties were not before the court;

(2) the applicants had not shown any legal or equitable right to enforce against the Singapore Company and therefore there was no way by which an injunction, interim or otherwise, could be granted;

(3) in the circumstances of this case if the applicant as plaintiff succeeded in the action he would be adequately compensated by damages, in which case no interlocutory injunction should normally be granted.

[**Editorial Note:** The applicant's appeal to the Court of Appeal (Civil Appeal No. 17 of 1977) was not proceeded with.]

Cases referred to:-

(1) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 2 W.L.R. 316; [1975] 1 All E.R. 504.

(2) *Fellowes* v. *Fisher* [1975] 3 W.L.R. 199; [1975] 2 All E.R. 829.

(3) *Maythorn* v. *Palmer* (1864) 11 L.T. 261.

(4) *Day* v. *Brownrigg* (1878) 10 Ch. D. 294.

MOTION.

Datuk David Marshall (*Sat Pal Khattar* with him) for the applicant.

R. Murugason (*P. Balagopal* with him) for the respondents.

Rajah J.: This is an appeal against my dismissal of a motion with costs filed by the plaintiffs on December 21, 1976 in Suit No. 3943/76 praying for an order —

"(1) that the second defendants be further restrained and an injunction granted by this Honourable Court on the 6th day of December 1976 on an *ex parte* application by the plaintiffs be continued, restraining them from doing whether by the first defendant its Managing Director the third defendant its Director/Secretary or by the fourth defendant its General Manager or other officers, servants or agents howsoever:—

(i) entering into any contract for the sale or purchase of foreign currency

(ii) entering into any contract for the sale or purchase of commodities whether or not in the ordinary course of its business

(iii) making or causing or permitting to be made any payment out of any bank account of the defendants Trans Continental Commodity Merchants (S) Pte Ltd. or

(iv) pledging the credit of the defendants Trans Continental Commodity Merchants (S) Pte Ltd. or causing or permitting the same to be pledged

without the previous written consent of the plaintiffs."

There were three other prayers in the motion which were not canvassed before me as events subsequent to its filing had rendered arguments on them unnecessary.

The Facts: On December 2, 1976 Hong Kong Vegetable Oils Limited, a company incorporated in Hong Kong and giving its registered office as at Room 1104 Tin Fook Hong Building, 77-81 Jervois Street, Hong Kong, commenced a suit (1976 H. No. 7554) in the High Court of Justice, Chancery Division England (English Suit) against five defendants, namely,

1. Malin Sirinaga Wicker
2. Trans Continental Commodity Merchants Ltd.
3. Chase Investments Ltd.
4. Joseph Michael Suresh Brito and
5. Gregory Sebastian otherwise known as G.S.M. Marcelline.

wherein the plaintiffs' claim was for:—

"(1) An injunction restraining the second defendants whether by the first defendant, its managing director, by the third defendant or its officers servants or agents or otherwise howsoever from

(i) entering into any contract for the sale or purchase of foreign currency

(ii) entering into any contract for the sale or purchase of commodities whether or not in the ordinary course of its business

(iii) making or causing or permitting to be made any payment out of any bank account of the second defendants or

(iv) pledging the credit of the second defendants or causing or permitting the same to be pledged

without the previous consent of the plaintiffs.

(2) An injunction restraining the third, fourth and fifth defendants from causing, permitting or procuring Trans Continental Commodity Merchants (Singapore) Pte. Limited from entering into any such contract or doing or causing or permitting to be done any such other thing as is mentioned in (1) above without the previous consent of the plaintiffs.

(3) A declaration that 275,000 £1 Ordinary Shares in the second defendants issued to the third defendant in or about July 1976 are held by the third defendant upon trust for the plaintiffs.

(4) An Order that the third defendant do transfer to the plaintiffs in accordance with its directions all the shares held by the third defendant and the second defendants.

(5) A declaration that 7,715 £1 Ordinary shares in the second defendants issued to the first defendant on or about February 26, 1975 are held upon trust for the plaintiffs.

(6) Alternatively a declaration that the first defendant is bound to transfer the last mentioned shares to the plaintiffs or to whom it may direct.

(7) An order that the first defendant do transfer the said shares and one such share allotted to him on or about February 7, 1975 to the plaintiffs or in accordance with its directions.

(8) A declaration that all shares in Trans Continental Commodity Merchants (Singapore) Pte. Limited held by the first, fourth and fifth defendants are held by them upon trust for the plaintiff or alternatively for the second defendants.

(9) An order that the first, fourth and fifth defendants do transfer such last mentioned shares to the plaintiffs or in accordance with its directions or alternatively to the second defendants.

(10) An order that the first, second, third and fourth defendants do permit the plaintiff or cause the plaintiff to be permitted to inspect the statutory books and book of account of the second defendants.

(11) An order that the first defendant do pay to the second defendants damages for breach of its contract of service with the second defendants.

(12) All necessary accounts and enquiries.

(13) Further or other relief.

(14) Costs.

The third defendant is sued personally and as trustee of the shares held by it in the second defendants under a declaration of trust dated February 7, 1975.

The plaintiff is or claims to be the beneficial owner of all the issued share capital in the second defendants and the relief sought in paragraphs (1), (10) and (11) is claimed on that footing.

The plaintiff also is or claims to be the beneficial owner of all the issued share capital in Trans Continental Commodity Merchants (Singapore) Pte. Limited or claims in the alternative that the second defendants are the beneficial owners of such shares and the relief sought in paragraph (2) is claimed on that footing."

The plaintiffs in the English Suit are a Hong Kong company with a substantial business in the commodity trade, largely in vegetable oils. The 1st defendant (Wicker) is one of the directors of the 2nd defendant company, having been appointed by the subscribers to the Memorandum of Association. The 2nd defendant (London Company) is a company incorporated in the United Kingdom on January 30, 1975 whose purpose was to handle the export business of the plaintiffs in London together with other commodity business. Its authorised share capital consists of two million £1 ordinary shares of which originally only 467,285 shares were issued. One of these was issued to the 1st defendant and the others were issued to the 3rd defendant. Subsequently 7715 further shares were issued to Wicker and 275,000 further shares were issued to the 3rd defendant (Chase Investments). The first directors of the London Company were Wicker, one Sivayogan and one Lionel Neville James Leefe. Chase Investments, the 3rd defendant, were incorporated on October 12, 1973 but did not carry on any business until January 1975. On January 22, 1975 their objects were widened and Wicker and the said Sivayogan were appointed directors in place of the then directors. The authorised share capital of Chase Investments is 100 £1 ordinary shares. The alteration of objects and changes in the directorate were effected with a view to its trading in the commodity business which later were carried on by the London company. When the London company was incorporated the sole function of Chase Investments became that of a nominee holding company. On January 22, 1975 allotments were made of the whole of the authorised share capital of Chase Investments as follows:

85 shares to Wicker
5 shares to the said Sivayogan
5 shares to the said Lionel Neville James Leefe
5 shares to one Richard Charles Pyman

A sum of US$1,118,440 (equivalent to £(Sterling) 467,285) was remitted by the plaintiffs on February 18, 1975 to Wicker and this money was utilised for the purchase of 467,285 shares in the London company, one share in the name of Wicker and 467,284 shares in the name of Chase Investments. On February 7, 1975 Chase Investments, acting through Wicker and the said Sivayogan, executed a Declaration of Trust stating that the said 467,284 shares and any further shares issued to them from time to time were held and would be held by them as nominees for the plaintiffs; Wicker executed a similar declaration of trust in favour of the plaintiffs in respect of his one share. The 4th defendant is the secretary of the London company. The 5th defendant is a shareholder and a director of the company immediately hereafter mentioned.

There was also incorporated in the Republic of Singapore on June 29, 1976 a company known as Trans Continental Commodity Merchants (Singapore) Limited (Singapore company) to carry on similar business activities in Singapore to those of the London company. The directors of the Singapore company were and are:

1. Malin Sirinaga Wicker (1st defendant both in the London Suit and in these proceedings)
2. Joseph Michael Suresh Brito (4th defendant in the London Suit)
3. G.S.M. Marcelline (5th defendant in the London Suit).

On June 29, 1976 one subscriber share each was allocated in the Singapore company to the said G.S.M. Marcelline (not a party in these proceedings), and one Miss Chia Lay Beng. There is no evidence as to how these shares were paid for, if at all. On September 2, 1976 144,501 and 5,000 shares in the Singapore company were allocated to Wicker and the said Brito (not a party in these proceedings) respectively. There is evidence as to whose monies paid for the said 144,501 shares but none as to the said 5,000 shares. On October 8, 1976 a further allocation of 84,328 shares was made to Wicker. All these three allocations were for cash but there is no evidence as to the ownership of the monies utilised to purchase the said 84,328 shares. On November 5 and 19, 1976 two new allotments of 266,170 and 598 fully paid shares in the Singapore company respectively were made to a company known as Chase Holding Incorporated (Chase Nauru), a company incorporated in the Republic of Nauru and whose address is Nauru Agency 40 P.O. Box 300, Iowa, Republic of Nauru. It is claimed by the plaintiffs in these proceedings that these shares (266,170 and 598) should not have been issued without their approval and consent. On November 20, 1976 all the said 144,501 and 84,328 (total 228,829) shares held by Wicker were transferred to Chase Nauru so that on the date of the issue of the writ herein, namely, December 6, 1976 the shareholders in the Singapore company were as follows:

1. G.S.M. Marcelline 1 share (not a party in these proceedings)
2. J.M.S. Brito 5,000 shares (not a party in these proceedings)
3. Chase Nauru 495,597 shares (not a party in these proceedings).

Total shares 500,598 plus 1 share of Chia Lay Beng not accounted for.

Against this background Suit No. 3943/76 (Singapore Suit) was started in Singapore on December 6, 1976 by a company calling itself Hong Kong Vegetable Oil Company Ltd. and giving its registered office as at No. 44C McDonnell Road, 3rd Floor, Hong Lok Mansion, Hong Kong, against:

1. Marlin Sirinaga Wicker
2. Trans Continental Commodity Merchants (S) Pte. Ltd.

3. Chia Lay Beng
4. R. Sunda

wherein the plaintiffs' claim was for:

"1. An injunction restraining the second defendants whether acting by the first defendant its managing director or by the third or fourth defendants being director/secretary and general manager respectively of the second defendants or by its officers servants or agents or otherwise howsoever from:—

(i) Entering into any contract for the sale or purchase of foreign currency

(ii) Entering into any contract for the sale or purchase of commodities whether or not in the ordinary course of its business

(iii) Making or causing or permitting to be made any payment out of the bank account of the second defendants or

(iv) Pledging the credit of the second defendants or causing or permitting the same to be pledged

without the previous consent of the plaintiff.

2. A declaration that the issued share capital now consisting of 500,598 $1 fully paid shares in the second defendants to the extent to which the first and third defendants own shares in the second defendant are held by each of them respectively on trust for the plaintiff.

3. Alternatively a declaration that the first and third defendants are bound to transfer all the shares held by them either in their own name or in the names of their nominee company to the plaintiff or to whom it may direct.

4. An order that the defendants herein do permit the plaintiff or cause the plaintiff to be permitted to inspect all the statutory books and books of accounts of the second defendants.

5. An order that the first defendant do pay to the plaintiff damages for breach of his obligation and undertaking to the plaintiff that all shares held in the second defendants would be held by him as Trustee for and on behalf of the plaintiff and which obligation to hold as Trustee he has so far not reduced into writing and has now refused to acknowledge although requested to do so by the plaintiff acting by their duly authorised agent Mr. K.K. Sharma.

6. All necessary accounts and inquiries.

7. Further or other relevant costs.

The first defendant is sued personally and as Trustee of the shares held by him through his nominees. The third defendant is sued as director/secretary of the second defendants and the nominal holder of one share therein. The fourth defendant is sued in his capacity as general manager of the second defendants.

The plaintiff also is and claims to be the beneficial owner of all the issued shares in the second defendants not owned by the first or third defendant or the first defendant's nominees or alternatively that such shares are held as trustee for and on behalf of Trans Continental Commodity (S) Pte Ltd. (a company incorporated in U.K.) in which the plaintiff is or is entitled to be treated as the beneficial shareholder of all the issued shares.

However no relief is sought in these proceedings against the other registered shareholders holding 1 share and 5,000 shares as these shareholders are not known to be residents of Singapore."

The plaintiffs are a company incorporated in Hong Kong with a paid up capital of HK$5000 (about S$2500).

Its directors are one H.F. Patel and one Bennett Hong Loke Teoh.

Before the hearing of the motion the plaintiffs had discontinued against the 3rd defendant, Chia Lay Beng.

During the course of the hearing on the motion it became clear that two sums of money, namely, US$60,000 and US$30,000 had on two different occasions in September 1976 reached Singapore for the purchase of shares in the Singapore company. The first sum of US$60,000 was sent to the said Wicker by the London company on September 2, 1976 out of its funds and this remittance provided the money for the purchase of 144,501 shares in the Singapore company by Wicker on September 2, 1976. The second sum of US$30,000 was sent by a company in Los Angeles in late September 1976 to Singapore. There was no evidence or anything on record to show at whose behest or on whose benalf this money was sent to Wicker in Singapore. This sum of US$30,000, equivalent to S$84,329, was utilised by Wicker for his purchase of 84,328 shares in the Singapore company on October 8, 1976.

The motion came up for hearing on April 18, 19 and 20, 1977 when it was urged upon me by both counsel that on the matters immediately before the court I should follow the House of Lords decision in the *American Cyanamid*[1] case to which I readily agreed. I accept Sir John Pennycuick's statement in the case of *Fellowes* v. *Fisher*[2] that, in considering the granting of an interlocutory injunction application Lord Diplock in the *American Cyanamid* case —

"laid down the following procedure as appropriate in principle: (1) provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case. (2) The court must consider whether the balance of convenience lies in favour of granting or refusing interlocutory relief. (3) 'As to that' the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should normally be granted. (4) If damages would not provide an adequate remedy the court should then consider whether if the plaintiff fails the defendant would be adequately compensated under the plaintiff's undertaking in damages, in which case there would be no reason upon this ground to refuse an interlocutory injunction. (5) Then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, being preservation of the status quo. By the expression 'status quo' I understand to be meant the position prevailing when the defendant embarked upon the activity sought to be restrained. Different considerations might apply if the plaintiff delays unduly his application for relief. (6) Finally, and apparently only when the balance still appears even:

'it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence.'"

I then endeavoured to apply the above principles to the motion before me.

Principle No. 1 'provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case'. I interpreted this principle to mean that once the court is satisfied that there is a serious question to be tried then the court is not to follow the previous practice of requiring a plaintiff to show a *prima facie* case before granting him an interim injunction. Therefore, in the instant case I was of the view that I had first to decide whether there is in fact and in law a serious question to be tried and again in my view implicit in 'a serious question to be tried' is the question whether the action is properly conceived and whether all the proper, necessary and/or interested parties are before the court

so that any order made by the court can properly and effectively be implemented. In my judgment, if these elements or any of them are not present then, because of non-compliance with this principle alone, the motion should stand dismissed.

I therefore proceeded to consider the allied questions of whether the Singapore Suit is properly conceived and/or all the proper, necessary and/or interested parties are before the court. In so considering it would be useful to take a close look at the English Suit. There the Hong Kong plaintiffs had provided all the monies for the purchase of the one share in the name of Wicker and of 467,284 shares in the name of Chase Investments and further there were declarations of trust both by Wicker and Chase Investments in favour of the Hong Kong plaintiffs. *Prima facie* the Hong Kong plaintiffs were the beneficial owners of all the said 467,285 shares. The English Suit was therefore properly conceived and the Hong Kong company were properly the plaintiffs in the English Suit. Furthermore, Chase Investments, the registered holders of the said 467,285 were the 3rd defendants in the London Suit. This being so all the proper, necessary and interested parties were before the London Court when it granted an interim injunction in the English Suit. Relevant to this the English Suit contains two statements (1) that "the third defendant (Chase Investments) is sued personally and as trustees of the shares held by it in the second defendant (London company) under a declaration of trust dated February 7, 1975" and (2) that "the plaintiff is or claims to be the beneficial owner of all the issued share capital in the second defendants (London company) and the relief in paragraphs (1), (10) and (11) is claimed on that footing." There is a third statement in the London Writ that the plaintiff also is or claims to be the beneficial owner of all the issued share capital in Trans Continental Commodity Merchants (Singapore) Pte. Limited (Singapore company) or claims in the alternative that the second defendants (London company) is the beneficial owner of such shares and the relief sought in paragraph (2) is claimed on that footing." The relief sought in the said paragraph (2) was for "an injunction restraining the third, fourth and fifth defendants from causing, permitting or procuring Trans Continental Commodity Merchants (Singapore) Pte. Limited from entering into any such contract or doing or causing or permitting to be done any such other thing as is mentioned in (1) above without the previous consent of the plaintiffs". In paragraph (8) of the London Suit there also was a claim for "a declaration that all the shares in Trans Continental Commodity Merchant (Singapore) Pte. Limited held by the first (Wicker), fourth (Brito) and fifth (Marcelline) defendants and held by them upon trust to the plaintiff or alternatively for the second defendants" (the London company). No order was made in the motion leading to the interim injunction in the English Suit relating to the affairs of the Singapore company as the learned judge, who heard the *ex parte* application, very properly did not think he had the power to make an order relating to the affairs of the Singapore company as they related to matters entirely within Singapore. Further he was not fully convinced as to the facts relating to the plaintiffs' claim in relation thereto.

In the Singapore Suit it will be noted that the plaintiffs are *Hong Kong Vegetable Oil Company Limited*, a Hong Kong registered company giving its registered address in the Writ as No. 44C McDonneli Road, 3rd floor, Hong Lok Mansion, Hong Kong and that in the English Suit the plaintiffs are *Hong Kong Vegetable Oils Limited* giving its registered address as at Room 1104, Tin Fook Hong Building, 77-81 Jervois Street, Hong Kong. A further point to be noted is that the declarations of trust in respect of the shares in the London company is in favour of *Hong Kong Vegetable Oils Limited*. However, counsel for the plaintiffs moving the motion in the Singapore Suit has said that the name of the plaintiffs in the Singapore Suit is the correct one and that the plaintiffs in the English Suit and the plaintiffs in the Singapore Suit are one and the same company and yet it appears that no action had been taken, certainly not to date of hearing of the motion, to set the name of the plaintiffs in the English Suit right.

It was in evidence on the hearing of the motion that of the 500,599 issued shares in the Singapore company only 144,501 shares had been purchased by monies provided by the London company. On the evidence before the court it is claimed that the London company is a subsidiary of the Hong Kong plaintiffs in the English Suit, but this however would not give the holding company, be it the Hong Kong plaintiffs in the Singapore Suit or the Hong Kong plaintiffs in the English Suit, any legal or equitable right or interest in the said 144,501 issued shares. Germane to the question now under consideration is a statement in *Pennington's* Company Law (1973 Third Edition) which appears at pages 44 and 45 and reads as follows: —

> "A holding company is one which owns sufficient shares in its subsidiary company to determine who shall be its directors and how its affairs shall be conducted. Often the holding company controls a number of subsidiaries, and the respective businesses of the companies within the group are managed as an integrated whole, as though they were merely departments of one large undertaking owned by the holding company. The law, however, is not concerned with the economic organisation of the group; in its eyes the holding company is merely a large shareholder of the subsidiary, so that the rule which distinguishes the legal personality of a company from that of its shareholders also separates the holding company from its subsidiary. Consequently, a holding company cannot sue to enforce rights which belong to its subsidiary, nor is it liable for its subsidiary's breaches of contract and torts, and conversely a subsidiary cannot sue to enforce rights belonging to its holding company or recover damages for wrongs done to it." (See *E.B.B.W. Vale Urban District Council* v. *South Wales Traffic Area Licensing Authority* [1951] 2 K.B. 366 and *Chief Assessor Property Tax* v. *Town and City Properties Ltd.* [1967] 1 M.L.J. @ 188).

In my judgment, the London company should have been the plaintiffs in the Singapore Suit or at the very least it should have been co-plaintiffs with the Hong Kong company, the plaintiffs in the Singapore Suit. And if the London company had been unwilling to be joined as plaintiffs then they should have been made defendants. Having come to this conclusion I was of the opinion that the Singapore Suit was misconceived and that therefore the plaintiffs did not comply with Principle (1) as enunciated by Sir John Pennycuick. In the Singapore Writ there is the statement by the plaintiffs that it "also is and claims to be the beneficial owner of all the issued shares in the

second defendants (Singapore company) not owned by the first (Wicker) or third defendant or the first defendant's nominees or alternatively that such shares are held as trustee for and on behalf of Trans Continental Commodity (S) Pte. Ltd. (a company incorporated in United Kingdom) in which the plaintiff is or is entitled to be treated as the beneficial shareholder of all the issued shares." (Here the name of the U.K. company should read Trans Continental Commodity Merchants Limited and not as set out in error above). I do not see how this alternative plea can be made unless the London company are co-plaintiffs in the Singapore Suit. Furthermore, in my view, Chase Nauru, the registered holders of the said 144,501 issued shares in the Singapore company should have been joined as defendants. No court, least of all a court of equity, will make an order affecting the interests or rights of third parties without their being present in court, *Maythorn* v. *Palmer*.[3] Yet again in my view the plaintiffs did not clear the hurdle set by Principle No. (1). Due to these defects in the action I was not satisfied that there was a serious question to be tried. To my mind "a serious question" can only arise if the proper, necessary and/or interested parties, in the first instance, are before the court. The plaintiffs must show some right or interest in the subject matter of the complaint. The equitable remedy of an injunction is only available "where there is an invasion of a legal or equitable right". *Day* v. *Brownrigg*[4] (per James L.J. at page 305). In the instant case the plaintiffs had no legal or equitable right to enforce against the Singapore company. There is therefore no way by which an injunction, interim or otherwise, could possibly have been granted.

Further, I was also of the view that in all the circumstances of this case "if the plaintiff succeeds he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should be normally granted." (*Fellowes* v. *Fisher*).

I therefore dismissed the motion with costs.

Motion dismissed.

Solicitors: *Khattar, Wong & Partners; Murugason & Co.*

CHEW TAK v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 1, 1978]

[Singapore — Magistrate's Appeal No. 79 of 1977]

Criminal Law and Procedure — Charge of intentionally giving false evidence — Accused making different statements at preliminary inquiry and a subsequent statement to police officer — Statement at preliminary inquiry not correct — Accused should not have been charged in alternative — Sentence — Penal Code, s. 193.

Penal Code, s. 193 — False evidence — Charge of intentionally giving.

The appellant had been convicted on two charges of intentionally giving false evidence. On the first charge he was alleged to have made two statements, one at the preliminary inquiry and one to a police officer in the course of a subsequent police investigation, which statements were different from one another. The appellant at the trial did not dispute that the statement he made at the preliminary inquiry was not correct and he said he made it to protect a detective and his informant. He was charged in the alternative at the trial. On the second charge it was again alleged that the appellant made differing statements at the preliminary inquiry and subsequently to a police officer. The appellant appealed against his conviction and sentence.

Held: (1) on the statements available to the prosecution the proper course in regard to the first charge should have been to charge the appellant with intentionally giving false evidence at the Preliminary Inquiry instead of a charge in the alternative as framed. However, the error in the form of charge did not occasion a failure of justice;

(2) having regard to the reason for his giving the false evidence, the sentence of nine months imprisonment was manifestly excessive and the sentence should be reduced to a fine of $1,000;

(3) having regard to all the circumstances there was a reasonable doubt that the appellant had intentionally given false evidence, as charged in the second charge, and the conviction on that charge should be set aside.

MAGISTRATE'S APPEAL.

Datuk David Marshall (*Nathan Isaac* with him) for the appellant.

Fong Kwok Jen and *Gwee Hak Theng* (Deputy Public Prosecutors) for the respondent.

Wee Chong Jin C.J.: On January 13, 1976, as a result of information received from an informer, a taxi SH.2381 U was stopped by three police officers. The taxi was searched and heroin was found in the taxi. The taxi driver was arrested and charged. Subsequently a Preliminary Inquiry was held and the taxi-driver was committed for trial in the High Court on a charge of drug trafficking. The appellant, Chew Tak, was one of the three police officers who arrested the taxi-driver. In accordance with the usual procedure, the appellant gave a statement on January 16, 1976 to the Police Inspector conducting the police investigation into the case against the taxi-driver. Later, on April 1, 1976 the appellant made and signed a statement under section 139 of the Criminal Procedure Code for use at the Preliminary Inquiry. At the Preliminary Inquiry held on April 9, 1976 this signed statement was tendered and admitted in evidence.

Before the charge against the taxi-driver came up for trial in the High Court, as a result of a direction from the Public Prosecutor, the appellant and the other two police officers who took part in the arrest of the taxi-driver were required to and made statements to two Police Inspectors in relation to the